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**IN THE UNITED STATES DISTRICT COURT FOR THE  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

**WACHOVIA BANK, N.A. AS TRUSTEE** )  
**(BAYVIEW), a national banking association** )  
**Plaintiff,** )  
**v.** )  
**JOHN CLIFTON ELSTEAD, et. al;** )  
**SANDRA F. ELSTEAD, also known as** )  
**SANDRA F. WAGNER, an individual ; TITLE** )  
**INSURANCE AND TRUST COMPANY, a** )  
**California corporation; FIDELITY NATIONAL** )  
**TITLE INSURANCE COMPANY, a California** )  
**corporation; SUSAN ELSTEAD, an individual;** )  
**LAW OFFICES OF WALKER & DURHAM,** )  
**an entity of unknown form; THE UNITED** )  
**STATES OF AMERICA; MBNA AMERICA** )  
**BANK, N.A., a national banking entity;** )  
**MEUSER COLLECTION COMPANY doing** )  
**business as MEUSER OF CALIFORNIA, a** )  
**California corporation; UNIVERSAL FENCES** )  
**& SUPPLY, INC., a California corporation;** )  
**THE CITY OF OAKLAND, a municipal entity;** )  
**DOES 1 through 100, inclusive,** )  
**Defendants.** )

Case No.: 3:07-cv-6015-SI

**RESPONSE TO DEFENDANT'S MOTION TO DISMISS  
 AND STATEMENT OF NON-OPPOSITION**

On December 17, 2007, defendant John C. Elstead filed a motion to dismiss this case

pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. Nos. 9-11). This motion is directed at the original complaint filed by plaintiff Wachovia Bank seeking a judicial foreclosure. Pursuant to Civil L.R. 7-3(b), and this Court's Order dated March 18, 2008, the United States files this statement of non-opposition to defendant's motion.

JOSEPH P. RUSSONIELLO  
United States Attorney

/s/ Thomas M. Newman  
THOMAS M. NEWMAN  
Assistant United States Attorney  
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**CERTIFICATE OF SERVICE**

I, **KATHY P. TAT** declare:

That I am a citizen of the United States of America and employed in San Francisco County, California; that my business address is Office of United States Attorney, 450 Golden Gate Avenue, Box 36055, San Francisco, California 94102; that I am over the age of eighteen years, and am not a party to the above-entitled action.

I am employed by the United States Attorney for the Northern District of California and discretion to be competent to serve papers. The undersigned further certifies that I caused a copy of the following:

**RESPONSE TO MOTION TO DISMISS**

to be served this date upon the party(ies) in this action by placing a true copy thereof in a sealed envelope, and served as follows:

  X   **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

       **PERSONAL SERVICE (BY MESSENGER)**

to the parties addressed as follows:

PLEASE SEE ATTACHED LIST

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on **March 19, 2008** at San Francisco, California.

/s/  
**KATHY P. TAT**  
**Legal Assistant**

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